

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT E. ELLIOTT, JR.,

Plaintiff-Appellant,

v

JASON M. BARCKHOLTZ,

Defendant-Appellee,

and

HARTFORD UNDERWRITERS INSURANCE
COMPANY,

Defendant.

UNPUBLISHED

May 16, 2006

No. 259255

Saginaw Circuit Court

LC No. 04-051296-NI

Before: White, P.J., and Fitzgerald and Talbot, JJ.

WHITE, P.J. (*dissenting*).

I respectfully dissent. I conclude that plaintiff offered evidence sufficient to establish that the injuries incurred from the automobile accident have affected his general ability to live a normal life. Plaintiff's restrictions were not solely "self-imposed," as the majority states. Plaintiff submitted below the affidavit of Dr. Marvin Bleiberg, a board-certified physical medicine and rehabilitation physician who treated plaintiff from January through September 2003. Regarding plaintiff's general ability to live his normal life, Dr. Bleiberg's affidavit states that plaintiff's injuries from the May 2001 accident "have become chronic problems and will cause lifetime pain. These injuries will necessitate ongoing medical treatment." Dr. Bleiberg's affidavit states that plaintiff "requires **permanent restrictions** of no standing or walking greater than 10 minutes with a 30 minute rest in between, no walking on uneven surfaces, no ladder climbing, no lifting or carrying over 10 pounds, and no operating foot controls with the left foot." Although plaintiff on deposition did testify at one point that he restricted his own activities because of the pain, and thus agreed with defense counsel that these restrictions were "self-imposed," soon after in the deposition plaintiff's testimony is clear that his general ability to lead his normal life was severely and permanently affected by the injuries resulting from the accident and the constant pain caused thereby, and when asked whether restrictions were imposed by any of his doctors, plaintiff clearly testified that he did not remember.

Under these circumstances, summary disposition was improperly granted. I would reverse and remand.

/s/ Helene N. White